



INTERIOR BOARD OF INDIAN APPEALS

Upper Midwest American Indian Center v. Minneapolis Area Director,
Bureau of Indian Affairs

26 IBIA 212 (09/07/1994)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

UPPER MIDWEST AMERICAN INDIAN	:	Order Docketing Appeal and
CENTER,	:	Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-175-A
MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 7, 1994

Appellant Upper Midwest American Indian Center seeks review of a July 29, 1994, decision of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). The Board of Indian Appeals (Board) received appellant's notice of appeal and statement of reasons, with accompanying documents, on August 26, 1994. The notice of appeal indicates that copies were served on the Area Director. For the reasons discussed below, the Board affirms the Area Director's decision. 1/

The Area Director's decision states that appellant's application was not reviewed because it did not include written assurances that the organization meets the definition of Indian organization at 25 CFR 23.2. Such assurances were required by 25 CFR 23.33(b)(3) and Part III.C(3) of the program announcement. The Area Director indicated that information meeting the requirement was not included in the first 40 pages of the application or the appendix.

Section 23.33(b) provides that "[m]andatory application requirements for Indian organization applicants shall include: * * * (3) Written assurances that the organization meets the definition of Indian organization at §23.2." Section 23.2 defines Indian organization "solely for purposes of eligibility for grants under * * * this part, [as] any legally established group, association, partnership, corporation, or other legal entity which

1/ Both the Area Director's decision and the program announcement informed appellant that it could file a statement of reasons in support of its appeal either with the notice of appeal or within 30 days after the notice of appeal was filed. See Part III.G. The Board concludes that appellant's statement of reasons, which was included with its notice of appeal, is the filing to which appellant was entitled under the program announcement, and that this appeal can be decided on the materials presently before it.

is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians.”

Appellant contends that its application included written assurances that it meets the definition of Indian organization. Appellant has submitted copies of those documents included in its application which it alleges make this showing. These documents are a resolution of the Board of Directors signed by the Chairperson, its Articles of Incorporation, and a letter from the State of Minnesota's Office of Attorney General.

The Board discussed Articles of Incorporation as proof that an organization meets the definition in 25 CFR 23.2 in Minneapolis American Indian Center v. Minneapolis Area Director, 26 IBIA 210 (1994). As in that case, appellant's Articles of Incorporation do not describe the ownership or control of the organization, or define its membership. In the absence of any indication of control and/or membership, the Board concludes that the Area Director did not commit reversible error by finding that appellant's Articles of Incorporation did not show that appellant met the requirement of 25 CFR 23.33(b) to provide written assurances that it was a n Indian organization within the meaning of 25 CFR 23.2.

Appellant identifies itself as an Indian organization in the resolution authorizing it to apply for ICWA funding. This conclusory statement does not provide any information upon which BIA can base an independent determination, and is therefore insufficient to meet the requirement in 25 C.F.R. 23.33(b). Cf. Minneapolis American Indian Center, supra (self-identification as an Indian organization on Standard Form 424 does not provide sufficient information for an independent determination).

The letter from the Office of the Minnesota Attorney General merely states that appellant had filed the proper information required for continued registration as a non-profit organization. The letter provides no evidence that appellant is an Indian organization within the meaning of 25 CFR 23.2.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Minneapolis Area Director's July 29, 1994, decision is docketed, and the decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge